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SUPPLEMENTAL TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1958~~ 1960 1961

No. ~~326~~ 5 2

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, APPELLANT,

vs.

EGAN, GOVERNOR OF ALASKA, ET AL.

No. ~~327~~ 6 3

ORGANIZED VILLAGE OF KAKE, ET AL., APPELLANTS,

vs.

EGAN, GOVERNOR OF ALASKA.

APPEALS FROM THE DISTRICT COURT OF THE STATE OF ALASKA

FILED AUGUST 20, 1959
JURISDICTION POSTPONED DECEMBER 7, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1959~~ 1960

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[fol. A] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Consolidated Civil Cases Nos. 8063-A and 8064-A

THE ORGANIZED VILLAGE OF KAKE ALASKA, Appellant,

vs.

WILLIAM A. EGAN, as Governor of the State of Alaska, Appellee.

ANGOON COMMUNITY ASSOCIATION, Appellant,

vs.

WILLIAM A. EGAN, as Governor of the State of Alaska, Appellee.

NOTICE OF APPEAL

I. Notice Is Hereby Given that the Organized Village of Kake Alaska, and the Angoon Community Association, federal chartered Indian corporations, Appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the District Court for the State of Alaska, Division Number One, Juneau, Alaska, [fol. 2] entered July 2, 1959, dismissing the complaints filed by Appellants.

This appeal is taken pursuant to 28 USC 1257 (1) and (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint filed by Organized Village of Kake Alaska, with affidavits of J. D. Thompson and Ernest Williams attached.

2. Complaint filed by Angoon Community Association with affidavits of Albert Thompson and Samuel Johnson attached.

3. Motion for preliminary injunction filed by Organized Village of Kake Alaska, and by Angoon Community Association.

4. Motion to dismiss complaints filed by Appellee William A. Egan against Organized Village of Kake Alaska, and Angoon Community Association.

5. Affidavit of Walter Kirkness filed by Appellee, William A. Egan.

6. Affidavits of Haakan Friele and Clarence D. Payne, filed by Appellant, Organized Village of Kake Alaska, and Angoon Community Association.

7. Brief of Appellant, Organized Village of Kake Alaska, and Angoon Community Association, filed in support of complaints.

8. Brief of Appellee, William A. Egan, filed in support of Motion to Dismiss Complaints.

9. Affidavits of Alf Erickson, Neil Grant, Harold Martindale, William E. Smith, and Andy Wikan, filed by Appellee, William A. Egan.

10. Reporter's transcript of proceedings of June 29, 1959, relating to assumption of jurisdiction by District Court as a State Court.

[fol. 3] 11. Reporter's transcript of record of proceedings on July 1, 1959, containing Appellants' oral notice of appeal.

12. Opinion rendered by the Court on July 1, 1959.

13. Motion for preliminary injunction pending appeal filed by Organized Village of Kake Alaska, and Angoon Community Association.

14. Order of Court denying motion for injunction pending appeal.

15. Supplemental findings of fact entered by Court on July 2, 1959.

16. Judgment of dismissal of the complaints of Organized Village of Kake Alaska, and Angoon Community Association entered July 2, 1959.

III. The following questions are presented by this appeal:

1. Is all authority to administer and manage the fish and wildlife resources of Alaska for the year 1959 reserved to the Federal Government by the terms of Section 6 (e) of the Alaska Statehood Act, 72 Stat. 339, so as to make the Alaska criminal statutes, 17 SLA 1959 as amended by 95 SLA 1959, unenforceable against the appellants by the State and its officials, and so as to make the regulations issued by the Secretary of the Interior (24 FR 2053 et seq.) March 7, 1959, allowing Appellants to fish the trap sites therein designated a valid exercise of that authority?

2. If Section 6 (e) of the Alaska Statehood Act, 72 Stat. 339, does purport to reserve such control to the Federal Government and thereby render inapplicable the Alaska criminal statutes, does Section 6 (e) violate the "equal footing" doctrine governing the admission of new States to the Union?

3. Does the Alaska Statehood Act, 72 Stat. 339, in Section 4 thereof and in its adoption and ratification of the Alaska Constitution (in this instance specifically Article 12, Section 12 thereof) comprehend a permanent disclaimer by the State of Alaska of control over Indian fishing within the State, and if so, is Section 4 of the Statehood Act an assumption of permanent jurisdiction (subject to further act of Congress) by the Federal Government over the location and manner of Indian fishing within the State,

[fol. 4] and further are the regulations issued by the Secretary of the Interior (24 FR 2053 et seq.) March 7, 1959, allowing Appellants to fish the trap sites therein designated a valid exercise of that authority?

4. If the Alaska Statehood Act does so comprehend a permanent disclaimer by the State of Alaska and a permanent assumption of jurisdiction by the Federal Government, does it violate the "equal footing" doctrine governing the admission of new States to the Union?

R. L. Jernberg, Attorney for The Organized Village of Kake Alaska and Angoon Community Association, Appellants, P. O. Box 893, Ketchikan, Alaska.

[fol. 5] Proof of Service (omitted in printing).

[fol. 6]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action File No. 8063A

THE ORGANIZED VILLAGE OF KAKE ALASKA, Plaintiff,

vs.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF—June 22, 1959

Comes now the plaintiff and for cause of suit alleges:

I.

That the plaintiff is a Federal Corporation, chartered as an organized Indian village under the laws of the United

States of America, which charter was ratified according to law under date of January 27, 1948, and is authorized by said charter to sue and be sued in courts of competent jurisdiction. That said village is located at Kake, Alaska; that said corporation is a membership corporation whose membership is that of the entire village, presently numbering 400 people; that the members thereof are of the Thlinget Indian Tribe; that the United States Department of Interior has authorized the institution of this suit by the plaintiff and the retention of counsel by the plaintiff for that purpose.

II.

That in July, 1950, plaintiff commenced doing business as Keku Canning Company, after the United States of America acquired title in its own name as trustee for the [fol. 7] plaintiff to certain salmon cannery property located on U. S. S. 693, at Kake, Alaska, including, but not limited to, cannery buildings, canning equipment, warehouses, docks, floats, outbuildings, boats, nine fish trap sites and the assignment of War Department Permits therefor, nine "tailhold" and "watchman cabin" sites and assignment of United States Forest Service Use Permits therefor, trap brailing tenders, trap setting tenders and rigging scows and all other equipment normally associated with the acquisition and processing of fish caught by a floating fish trap. That said purchase and acquisition was by the United States of America acting through the Department of Interior and Acts of Congress, and pursuant thereto the funds necessary to accomplish said acquisition were supplied by the United States of America in the amount of $362,000.00, and said property has a present day book value of $377,-000.00.

III.

That since July, 1950, plaintiff has, as beneficial owner to the date of this complaint, continuously operated its cannery and fished its trap sites (during seasons prescribed by law) in pursuit of the purposes for which it was organized as a Federal chartered Indian corporation, with the exception that during the past few years of declining

salmon runs, the plaintiff has, as a party to a general agreement among the salmon industry in Alaska, restricted its use of its sites so as to use less than all of the nine sites from year to year.

IV.

That since July 1950, the funds for operation of said cannery, setting and fishing of the traps, etc., have been supplied by the United States of America; that during this period the plaintiff has paid no tax to the Territory of Alaska based upon operation of fish traps or the packing of salmon for commercial purposes by reason of the fact that it claimed exemption as a Federal chartered Indian corporation, an instrumentality of the federal government [fol. 8] and therefore exempt from taxation by the Territory.

V.

That the operation of the cannery and utilization of the fish trap sites mentioned was undertaken by the plaintiff for the purpose of furnishing employment for the members of the Organized Village of Kake, and to provide a means of allowing them to have their social and welfare needs advanced through use of profits obtained from the operation, all designed to promote the advancement of the people of the said village in a manner compatible with the intention of the Congress of the United States to care and provide for the social and economic welfare of the Indian.

VI.

That on or about November 14, 1958, the Secretary of the Interior published in the Federal Register (23 F.R. 8874) a notice that he intended to amend the then existing regulations governing fishing for or taking species of commercial fish and shellfish in the waters of Alaska, and that it was proposed to prohibit the taking of fish in Alaska waters by use of fish traps except insofar as certain Indian tribes or villages were concerned; that on March 7, 1959, the said Secretary of Interior published his amendments to the fishing regulations in 24 F.R. 2053, and therein prohibited the

taking of fish in Alaska waters by use of fish traps except that such taking would be allowed with respect to trap sites owned, among others, by the Organized Village of Kake, Alaska, plaintiff herein, therein described as follows:

(1) Kake-Cape Fanshaw, located at 57° 10′ 52″ N. lat. 133° 32′ 44″ W. long.

(2) Kake-Point Pybus, located at 57° 18′ 40″ N. lat. 133° 57′ 21″ W. long.

(3) Kake-Point Macartney, located at 57° 01′ 23″ N. lat. 134° 02′ 50″ W. long.

(4) Kake-Cornwallis, located at 56° 55′ 52″ W. lat. 134° 16′ 08″ W. long.

[fol. 9] VII.

That on or about March 10, 1959, Elmer Bennett, the then acting Secretary of the Interior advised James E. Hawkins, Area Director, Alaska Native Service, Juneau, Alaska, that pursuant to the disclaimer of Indian fishing rights made by the State of Alaska, upon admission to the Union, and pursuant to the long-standing supervisory control exercised by the United States for the protection of the Indians, the regulations for fishing in Alaska for 1959 would permit the operation of traps by the plaintiff (among others) and that therefore the plaintiff (among others) could proceed to make plans for the operation of their salmon canneries in 1959 on the basis that they would be allowed to continue the use of such traps as designated by the Secretary; that this information was transmitted by James E. Hawkins to the plaintiff herein under date of March 16; that pursuant to the information therein contained the plaintiff then undertook to ready itself to operate its cannery for the 1959 season based upon the operation of four trap sites; that pursuant thereto, plaintiff notified the Acting Regional Director of the Bureau of Commercial Fisheries, Juneau, Alaska, under date of April 1, 1959, that plaintiff was going to operate the four above described trap sites, following which on or about May 12, 1959, plaintiff was supplied by the Petersburg office of the said

Bureau of Commercial Fisheries instructions and regulations concerning the operation of said traps and seals for their closure during closed periods.

VIII.

That on or about May 21, 1959, the defendant, William A. Egan as Governor for the State of Alaska made public his intent to seek enforcement of a Statute of the State of Alaska, identified as 17 SLA 1959 stating that said statute [fol. 10] prohibited the use of fish traps in Alaska, and that it made it a crime subject to fine and imprisonment to violate the provisions thereof and stating further that the third ordinance the Constitution of Alaska prohibited the plaintiff's use of fish traps, and that the police power of the State of Alaska prohibited said use; thereafter the said defendant on numerous occasions, in newspapers and in personal appearances before the public, including appearances before the Council of the plaintiff stated that if the plaintiff installed its traps that the State of Alaska would seize them, arrest the persons who installed and maintained them, and take such other actions as he deemed appropriate to the alleged violation of law; these threats were also made by agents of the defendant William A. Egan acting on his behalf directly to the plaintiff's council on a number of occasions and to the attorneys retained to represent the plaintiff's interests; that on or about the 15th day of June, 1959, plaintiff set one of its trap frames at its site at Pybus Point, and thereafter the defendant William A. Egan carried out his threat and caused the law enforcement officers of the State of Alaska to arrest the President of the Council of the plaintiff and the foreman of the crew that set the trap, and caused informations to be filed against them in this Court, and further that said trap has been seized and possessed by these law enforcement officials acting under direct authority of said defendant William A. Egan.

IX.

That the action heretofore taken by the said defendant and his agents, and the action threatened to be taken is

wrongful and in violation of the laws of the United States of America, and in violation of the Constitution of the United States of America, and in violation of the Constitution of the State of Alaska, for the following reasons, and such other reasons as will be brought forth at trial [fol. 11] of this cause, to-wit:

1. That the laws of the United States of America prevent the State of Alaska, or any officer or agent thereof from exercising any control over the supervision and management of the fish and wildlife in Alaska at this time (Section 6e Statehood Act, 72 Stat. 339, Section 6e).

2. That the laws of the United States of America (Section 4 Statehood Act, 72 Stat. 339, Sec. 4) and the Constitution of the State of Alaska (Article 12, Section 12) prevent the State of Alaska from interfering with the control and management of Indian fishing rights held either by Indians or held by the United States of America in trust for Indians, at any time, now or in the future.

3. The regulations issued by the Secretary of the Interior (24 F.R. 2053, et seq.) March 7, 1959, allowing the plaintiff to operate and utilize four fish traps at the sites noted hereinabove constitute an exercise by the United States of its exclusive power both over the whole Alaska fisheries and over the fishing rights of Indians.

4. The commerce clause of the Constitution of the United States of America places the regulation of the social and economic welfare of Indians as well as the regulation of fish and wildlife resources of the United States exclusively within the power of Congress of the United States.

5. That the statute under which defendant claims his authority (17 SLA 1959), the claimed constitutional mandate (Ordinance #3), and the general claim of [fol. 12] police power are all repugnant to the principles and laws above stated and therefore are in violation of the laws of the United States, the Constitution

of Alaska and Constitution of the United States of America and are therefore void and of no force and effect.

X.

That unless the Court prevents the defendant from so doing by its power of injunction, the defendant will cause his agents and law enforcement officials to seize the plaintiff's traps, arrest the people employed by plaintiff to erect and maintain said traps, every time the plaintiff seeks to place and fish such trap or traps pursuant to the regulations issued by the Secretary of Interior as above mentioned; all to the irreparable harm and damage of plaintiff as below set forth.

XI.

That the wrongful seizure of plaintiff's traps and arrest of plaintiff's employees engaged in setting and maintaining said traps will result in irreparable harm and damage to the plaintiff as follows: That if the plaintiff is unable to use the four traps that it has made ready to locate at sites approved by the Secretary of the Interior, the traps will become valueless to the plaintiff with a loss to the plaintiff of about $100,000.00, which figure includes only the physical value; that 45% of the plaintiff's canned salmon production is based on trap caught salmon, and that without the use of these four traps plaintiff would be forced to drastically curtail its operation, quite likely to the point of complete shutdown; that plaintiff cannot convert to an operation completely supported by a seine fleet because (1) there are no boats available either in Alaska or in the other States (2) if boats were available there are no trained [fol. 13] crews to man them; (3) plaintiff has neither the funds nor source of funds to acquire such a fleet, if one was available; such curtailment or closure of the cannery would result in direct loss to the plaintiff of the value of the cannery and equipment which has no value other than that of a salmon cannery, in the amount of $377,000.00 and would result in plaintiff being unable to retire its current obligation of $781,000.00 to the United States, and would result in a payroll loss to the 70 to 100 employees of plain-

tiff (members of plaintiff corporation) of about $50,000.00 to $65,000.00, and would result in the loss to the plaintiff of 30% of the net profits of the cannery that go to its members for community advancement and improvement; that none of these direct losses can be recovered from the State of Alaska under the terms of 170 SLA 1957; that the only employment available now, and historically, to the members of the plaintiff corporation at Kake, Alaska, is in the cannery or on plaintiff's seine boats and trap servicing vessels; that this employment though of short duration constitutes the sole source of income for the calendar years for almost all of plaintiff's members; that the closure of plaintiff's cannery, or curtailment to the point where it could operate would completely wipe out the economic base of the plaintiff's members, and leave the village of Kake with no means of self support and entirely dependent upon relief dole and welfare aid; that the harm and damage that will accrue to the plaintiff and to its members thereby is beyond all calculation and extends to the very fiber of their social, economic and cultural well being, for which no measure of money damage can be fixed.

XII.

That the commercial salmon fishing season at plaintiff's trap sites commences 6:00 o'clock A. M., Wednesday, the 24th day of June, 1959; that it is necessary that the trap [fol. 14] frames and related gear be placed at the sites and made ready for operation prior to the opening time in order that no fishing time will be lost; that the season closes on the 22d of August, 1959, at 6:00 o'clock P. M. and the time lost at the opening of the season cannot be added on to the end thereof; that if plaintiff places its traps in position the defendant will cause his agents and officials to seize the traps and arrest the people involved unless restrained by order of this Court; and that for that reason it is necessary that defendant and his agents be restrained from interfering in any way with the advance placing and setting of said traps at said sites.

XIII.

That it is necessary that a temporary restraining order without notice issue upon the filing of this complaint, as prayed for herein, in order to preserve the status quo of plaintiff's rights pending the hearing on the prayer and motion for a preliminary injunction because unless restrained the defendant and his agents will make the seizures and arrests herein referred to and thereby accomplish the very wrongful act that plaintiff is seeking to restrain before a hearing can be had on this complaint for an injunction, and that as alleged herein in Paragraph XII it is necessary that plaintiff set its traps as soon as possible if it is to avoid the irreparable damage and loss that it seeks by this petition to avoid; and that the very irreparable harm and damage and loss alleged in Paragraph XI herein will take place in large part during the time that elapses from the filing of this complaint and a determination on the prayer for a preliminary injunction unless defendant is so restrained.

XIV.

That the defendant has already caused the seizure of one of plaintiff's traps located at Point Pybus and has ousted plaintiff of possession; that this trap normally accounts for [fol. 15] 50% of the plaintiff's trap caught fish production; that during the first 10 days of the season this trap normally catches about one-third (⅓) of its total production; that the season opens 6:00 A. M. Wednesday, June 24, 1959; that the very irreparable harm plaintiff is seeking to have prevented pending a hearing on the merits will in an appreciable measure take place if this trap is left in the possession of the defendant until the conclusion of this suit; that if plaintiff's rights are to be preserved and the status quo maintained pending a final determination in this matter, it is essential that this trap be returned to the plaintiff forthwith; plaintiff has no other trap to utilize in its place, and the only area at Point Pybus plaintiff can use under the Secretary of the Interior's regulations is the area now occupied by the trap held by the defendant's agents.

XV.

That the plaintiff has no plain, speedy or adequate remedy at law to prevent the unlawful action of the defendant and his agents.

Wherefore, plaintiff prays as follows: That the defendant, his agents, successors, deputies, servants and employees, and all persons acting by or through or under him be perpetually enjoined from interfering in any manner with the right of the plaintiff to erect, moor, maintain, operate and fish floating fish traps of the type allowed by the Secretary of the Interior of the United States of America at the following sites:

(1) Kake-Cape Fanshaw, located at 57° 10′ 52″ N. lat. 133° 32′ 44″ W. long.

(2) Kake-Point Pybus, located at 57° 18′ 40″ N. lat. 133° 57′ 21″ W. long.

(3) Kake-Point Macartney, located at 57° 01′ 23″ N. lat. 134° 02′ 50″ W. long.

(4) Kake-Cornwallis, located at 56° 55′ 52″ W. lat. 134° 16′ 08″ W. long.

[fol. 16] and that defendant, his agents, successors, deputies, servants and employees, and all persons acting by or through or under him be perpetually enjoined from in any manner attempting to enforce the provisions of 17 SLA 1959 or the provisions of any other law of the State of Alaska so as to prevent the plaintiff from operating said traps or so as to punish or penalize or prosecute plaintiff, its employees, agents or members for operating fish traps as above described and that pending the filing of an answer and the hearing and determination of this action that a preliminary injunction restraining the defendant, his agents, successors, deputies, servants, and employees and all persons acting by or through or under him from interfering in any manner with the right of the plaintiff to erect, moor, maintain, operate and fish floating fish traps of the type allowed by the Secretary of the Interior of the United States of America at the sites listed hereinabove and from

in any manner attempting to enforce the provisions of 17 SLA 1959 or the provisions of any other law of the State of Alaska so as to prevent the plaintiff from operating said traps or so as to punish or penalize or prosecute plaintiff, its employees, agents or members for operating fish traps as above described, and further that pending the hearing thereof that a temporary restraining order issue restraining the defendant, his agent, successors, deputies, servants and employees, and all persons acting by or through or under him from interfering in any manner with the right of the plaintiff to erect, moor, maintain, operate and fish floating fish traps of the type allowed by the Secretary of the Interior of the United States of America at the above mentioned sites, and from in any manner attempting to enforce the provisions of 17 SLA 1959 or the provisions of any other law of the State of Alaska so as to prevent the plaintiff from operating said traps or so as to punish or penalize or prosecute plaintiff, its employees, agents or members for operating fish traps as above described, and [fol. 17] further that the defendant, his agents, servants and employees be ordered to deliver up possession to the plaintiff forthwith that certain trap fishing structure seized by the defendant's agent situate at Point Pybus, Alaska, and for such other and further relief as to the Court seems meet and equitable.

Dated at Ketchikan, Alaska, this 22d day of June, 1959.

R. L. Jernberg, C. L. Cloudy, Attorneys for Plaintiff.

Duly sworn to by Ernest Williams, Sr., jurat omitted in printing.

[fol. 18]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action File No. 8063A

THE ORGANIZED VILLAGE OF KAKE, ALASKA, Plaintiff,

vs.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

AFFIDAVIT OF ERNEST WILLIAMS, SR., IN SUPPORT OF COMPLAINT FOR A TEMPORARY RESTRAINING ORDER

State of Alaska)
Ketchikan Precinct) ss:

Ernest Williams, Sr., being first duly sworn, deposes and says:

1. That the plaintiff, the Organized Village of Kake, Alaska, is a Federal chartered Indian Corporation under the Indian Reorganization Act of June 18, 1934, as amended, and that its charter was duly approved by the Secretary of the Interior and ratified by the members of the association.

2. That affiant is the president of the council, the governing body of said Organized Village of Kake, Alaska, and is duly authorized by said council to make this affidavit.

3. That the Organized Village of Kake, Alaska, is located on the west coast of Kupreanof Island, approximately 100 miles southerly from Juneau, Alaska. That the community has a population of 400 persons, all of whom are Native Alaska Indians of the Thlinget tribe. That the entire adult population is wholly dependent upon the salmon fishery, as primary fishermen, and workers in and about the salmon [fol. 19] cannery at Kake, Alaska.

4. The United States is the owner of the Kake cannery and the Organized Village of Kake, Alaska, is the beneficial owner thereof, its buildings, machinery, equipment, and floating fish traps.

5. That the United States, as aforesaid, is the owner of all of said cannery and fish traps, by virtue of a conveyance to the United States, in trust for the Organized Village of Kake, from P. E. Harris and Company, on February 10, 1950, and owner of the War Department and Forest Service permits for said traps.

That, by virtue of a purchase loan agreement, the United States has required the Organized Village of Kake to reimburse it for the cost of said cannery, equipment and fish traps, plus additional loans and advances made since 1950. That the earnings of the Kake cannery are handled under the supervision of the United States, and are distributed as follows: Debt retirement, funding for operations, reserve for depreciation and improvements, for social, educational and relief purposes, and dividends to members, provided the Organized Village of Kake is not indebted to the United States. That 25% of the net profits from the cannery operations, before costs of administration are paid, are given to Kake for public works and other improvements in the village; and 5% of the net profits from said cannery operations, before costs of administration are paid, are allocated to Kake seine fishermen supplying fish to the cannery.

That under the loan agreement above described, the Organized Village of Kake is presently indebted to the United States in the sum of $781,872.33 which includes the sum of approximately $48,000 advanced by the United States for [fol. 20] the installation of the four fish traps for the 1959 fishing season.

6. That the Secretary of the Interior, the Honorable Fred A. Seaton, during the latter part of 1958 assured the Village of Kake it could install floating fish traps, and by virtue of this and other official releases and notices preparations were made for the 1959 season, including the borrowing of money from the United States for the purchase of materials for the traps. That on March 19, 1959, the Secre-

tary of the Interior issued a regulation in the Federal Register, numbered 115.26, stating that

"Salmon traps owned and operated by native Indian communities may be operated in 1959 at the following sites:

(b) Organized Village of Kake

(1) Kake-Cape Fanshaw, located at 57°10′52″ N. lat. 133°32′44″ W. long.

(2) Kake-Point Pybus, located at 57°18′40″ N. lat. 133°57′21″ W. long.

(3) Kake-Point Macartney, located at 57°01′23″ N. lat. 134°02′50″ W. long.

(4) Kake-Cornwallis, located at 56°55′52″ N. lat. 134° 16′08″ W. long.

7. That the money invested in equipping the four traps, as mentioned in paragraph 5 above, if the Village of Kake is deprived the use of the traps, cannot be recovered. That the traps are made up and readied for operation, and the materials therein would be rendered valueless if the traps had to be dismantled, as the components, such as wire mesh, webbing, labor, etc., would be unsalvageable. In addition thereto there will be not less than a 45% loss of production of fish which cannot otherwise be recovered. All available seine boats have been utilized in the past, and it is quite unlikely there would be any substantial increase in their catches. There is a great lack of seine boats in Alaska, and none could be built or manned within the brief time re- [fol. 21] maining before the season opens. That the loss of use of traps means fewer cases of salmon will be produced, and the cannery, which is practically the sole means of support for the Kake natives, will be forced to cut employment. That the loss of production normally enjoyed from the traps could conceivably result in a partial or complete closure of the cannery. That there is no provision in law for the extension of the salmon fishing season whereby the Kake Organized Village, if the said fish traps are not allowed to fish with the result the production would be de-

pendent upon the catches from the members' 16 seine boats, could possibly recapture the loss the banning of said traps would create.

8. That on or about June 5, 1959, the State of Alaska notified the Organized Village of Kake that it could not install or operate the fish traps above mentioned, and that it would arrest and attempt to obtain the conviction of anyone who attempted to install said traps under an alleged criminal statute of the State of Alaska; and, that on June 17, 1959, the Organized Village of Kake, pursuant to the authority granted by the Congress of the United States, the Secretary of the Interior, the Statehood Act and the Constitution of Alaska, attempted to moor a trap at Pybus Point, Alaska, and was prevented from doing so by seven or more fish and game agents, tax collector, or state police (all of whom affiant believes were agents and representatives of the State of Alaska and its Governor), when said officials placed affiant under arrest on the charge of violating Chapter 17, Session Laws of Alaska, 1959, which criminal charge affiant is informed is pending in the District Court at Juneau; and, that immediately following said arrest of affiant said officers took possession of said trap and have retained possession thereof continuously since June 17, 1959.

That the aforesaid threatened action by the State of [fol. 22] Alaska and the aforesaid arrest of affiant and seizure, has interfered with the fishing rights of the Organized Village of Kake and has prevented and will prevent the installation and operation of its fish traps, all of which has caused the Organized Village of Kake irreparable injury and damage for which there is a lack of legal remedy, as affiant verily believes.

9. That the Indian Reorganization Act of June 18, 1934, as applied to Alaska and to the plaintiff, has looked toward the creation of a solid fishing economy benefiting the Indians and the members of the plaintiff corporation; that it has been applied through use of the cooperative fishing and processing venture in an effort to raise the standard of living above that of a mere subsistence level; that the choice of creating a solid fishing economy, over that of some

other type of economy was determined by the physical location of plaintiff's village, the resources available to it, and the capacities and capabilities of its members; that no other economic base has been established nor has any type of economic base appeared available and suitable to our needs or abilities; that the members of the plaintiff corporation are incapable, through no fault of their own, of finding and placing in operation a substitute base of economy; that it is the understanding of myself and the members of the plaintiff corporation that the decision of the Secretary of the Interior to allow the plaintiff to utilize the trap sites herein involved was based (in addition to legal principles) upon a continuing fulfillment of a plan to create a sound fishing economy for us; that the loss of these trap sites and the right to fish them and the resultant closure of our cannery (or the curtailing of operation to a point where its benefits become insignificant) operation will wipe out all advances we have made toward establishing ourselves within a strong social and economic framework of living and will leave us with no avenue of escape from a lifetime of dependence upon public relief.

[fol. 23] 10. That the State of Alaska will suffer no damage from the granting of a temporary restraining order.

Ernest Williams, Sr.

Subscribed and sworn to before me this 22d day of June, 1959.

Robert L. Jernberg, Notary Public for Alaska,
My commission expires: April 29, 1961.

(Seal)

[fol. 24]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8063A

THE ORGANIZED VILLAGE OF KAKE ALASKA, Plaintiff,

vs.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

AFFIDAVIT OF J. D. THOMPSON IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

State of Alaska)
Ketchikan Precinct) ss:

J. D. Thompson, being first duly sworn, on oath deposes and says:

1. That he is the manager of the cannery for the Organized Village of Kake which is located at Kake, Alaska, and does business under the name and style of Keku Canning Company. That he has been connected with said cannery for the Organized Village of Kake since 1956. That in his capacity as manager he has charge and custody of all the records of said cannery and has personal knowledge thereof, and of matters transpired and existing between Kake and the United States.

2. That the United States on February 15, 1950, purchased from P. E. Harris and Company the cannery at Kake which included lands, buildings, machinery, equipment, floating equipment, supplies, fish traps, fish trap sites, rights, privileges and appurtenances, in trust for the Organized Village of Kake.

That the United States paid the sellers the sum of [fol. 25] $363,360.49 for the above mentioned properties, and Kake entered into a purchase loan agreement with the

United States whereby the latter would be reimbursed out of cannery earnings, together with interest at the rate of 2% per annum. That the United States also agreed to finance Kake's operation of said cannery, and has done so annually since 1950, and the total indebtedness of Kake to the United States is presently $781,872.33. That the present value of said properties is $377,218.45.

That Kake has been preparing for the 1959 salmon season since the winter and spring of 1958-59, including the purchase of materials and labor to ready Kake's four (4) floating fish traps for the season, which opens on June 24, 1959. That the money so expended on said fish traps has been advanced by the United States under said loan agreement, and amounts to approximately $50,000, which Kake is obligated to repay.

That the disbursement of all funds by Kake is subject to prior authorization being given by the United States, and the United States retains and exercises supervisory authority over all transactions respecting said cannery. That the employment of counsel in this case was made upon the aƒ ρroval of the Secretary of the Interior.

That the value of the trap frames, anchors, and gear, ready to fish, is approximately $25,000 each, or a total of $100,000 for the four traps involved. That the salvage value, if the native traps are abolished, would be almost nothing, due to the fact there is no other use for them besides fishing, and non-native traps have been banned, thereby eliminating the market for such gear. The wire mesh, cables, webbing, nails, bolts, staples and appurtenances would not be salvageable, and the remaining parts, namely, the logs and anchors, would be of little value.

That, while the factors may vary with each annual sal- [fol. 26] mon season, generally it is necessary to can about 35,000 cases before the cannery can expect a profit. That in order to reach even a goal of 35,000 cases intensive fishing by a large amount of fish catching gear, is required.

That during the 1958 season approximately 45% of the cannery pack was produced by its four floating fish traps, and 55% was produced by the seine boats. That the elimination of the four traps would require, according to the experience of 1958, about 12 additional seine boats. That

seine boats cost between $30,000 and $60,000 each, and according to affiant's understanding seine boats are unavailable either in Alaska or in the Puget Sound area, and if they were it is common knowledge that experienced fishermen are not. That while the United States has and does make loans to Kake for cannery operations, it does not authorize the purchase, and has specifically prohibited the purchase of seine boats. That affiant believes the financial condition of the cannery is such that there are no sources of financing available to it for this purpose.

That the Organized Village of Kake is the permittee of the U. S. Forest Service, which permits it to use certain of the Tongass National Forest lands for tailholds for said fish traps. That, also, Kake has been licensed by the U. S. Corps of Engineers to moor and install fish traps in the navigable waters.

That the Organized Village of Kake is and has been immune from raw fish taxes, and fish trap license taxes which were imposed on non-native fish trap operators by the Territory of Alaska, and the new State of Alaska, by virtue of Kake's status as an instrumentality of the United States. That the Territory of Alaska, and the now State of Alaska, has never regulated or attempted to regulate fish traps.

That Kake in the operation of said fish traps has abided by all conservation directives of the U. S. Fish & Wildlife Service, and in 1953 it voluntarily reduced its trap production by 50%.

[fol. 27] That the population of Kake is approximately 400, all of whom are members of the plaintiff corporation; that the entire community is dependent upon fishing; that approximately 50 women and 10 men are employed in the cannery during the canning season; that 25 men are employed in pre-season work on fish traps and the cannery; that the Kake fishermen operate 23 seine boats serving the cannery, and the community's lessee operates 20 seine boats; that the number of Kake members involved in seining is 115, or 175 Kake members in all are identified with the cannery operations. That the cannery workers receive approximately $75,000 annually in wages, and the seine fishermen receive about $115,000 annually.

That the elimination of the four traps would obviously critically reduce production of canned salmon, and, as the manager for the Kake cannery, affiant could not recommend operation of the cannery with only 23 seine boats, based on experience of the past several seasons. That the result of closure would be the loss of employment and income, community improvements, and of more importance the interest and desire for betterment that the Kake Indians have developed from their beneficial ownership of and participation in the affairs of the cannery.

That on April 6, 1959, the cannery, as it is required so to do, notified the U. S. Bureau of Commercial Fisheries that it would install for operation during the 1959 salmon fishing season its four fish traps, under the authority granted by the Secretary of the Interior, as set forth in the Federal Register for March 19, 1959, at page 2069.

That the four floating fish traps are ready to be moved to said sites and to fish on June 24, 1959, however, the Organized Village of Kake and affiant have received notice officially and through news media that the State of Alaska [fol. 28] would prevent fishing by traps by filing criminal charges; and, that affiant has knowledge of the occurrences involving the Pybus Point trap, installed by the Organized Village of Kake, wherein the State of Alaska on June 17, 1959, arrested the president of the village council and others for alleged violations of a state law prohibiting the installation of traps.

That during my tenure as cannery manager at Kake, I have read and have knowledge of each annual issue of the commercial fishery regulations promulgated by the Secretary of the Interior, and the 1959 regulations contained the first reference, to my knowledge, to regulations relating to native fish traps.

J. D. Thompson

Subscribed and sworn to before me this 22d day of June, 1959.

Robert L. Jernberg, Notary Public for Alaska.
My commission expires: April 29, 1961.

(Seal)

[fol. 29]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE, AT KETCHIKAN

Civil Action File No. 8064A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

vs.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF—June 22, 1959

Comes now the plaintiff and for cause of suit alleges:

I.

That the plaintiff is a Federal corporation, chartered as an organized Indian village under the laws of the United States of America, which charter was ratified according to law under date of November 15, 1939, and is authorized by said charter to sue and be sued in courts of competent jurisdiction. That said village is located at Angoon, Alaska; that said corporation is a membership corporation whose membership is that of the entire village; presently numbering 306 people; that the members thereof are of the Thlinget Indian Tribe; that the United States Department of Interior has authorized the institution of this suit by the plaintiff and the retention of counsel by the plaintiff for that purpose.

II.

That in March, 1948, plaintiff commenced doing business as Hood Bay Salmon Company after the United States of America acquired title in its own name as trustee for the plaintiff to certain salmon cannery property located on U. S. S. 1480, Hood Bay, Alaska, including, but not limited to, cannery buildings, canning equipment, ware-

[fol. 30] houses, docks, floats, outbuildings, boats, four fish trap sites and the assignment of War Department Permits therefor, four "tailhold" and "watchman cabin" sites and assignment of United States Forest Service Use Permits therefor, trap brailing tenders, trap setting tenders and rigging scows and all other equipment normally associated with the acquisition and processing of fish caught by a floating fish trap. That said purchase and acquisition was by the United States of America acting through the Department of Interior and the Acts of Congress, and pursuant thereto the funds necessary to accomplish said acquisition were supplied by the United States of America in the amount of $260,000.00, and said property has a present day book value of $207,000.00.

III.

That since March, 1948, plaintiff has, as beneficial owner, to the date of this complaint, continuously operated its cannery and fished its trap sites (during seasons prescribed by law) in pursuit of the purposes for which it was organized as a federal chartered Indian corporation, with the exception that during the past few years of declining salmon runs, the plaintiff has, as a party to a general agreement among the salmon industry in Alaska, restricted its use of its sites so as to use less than all of the four sites from year to year.

IV.

That since March, 1948, the funds for operation of said cannery, setting and fishing of the traps, etc., have been supplied by the United States of America; that during this period the plaintiff has paid no tax to the Territory of Alaska based upon operation of fish traps or the packing of salmon for commercial purposes by reason of the fact that it claimed exemption as a federal chartered Indian corporation, an instrumentality of the federal government, and therefore exempt from taxation by the Territory.

[fol. 31]

V.

That the operation of the cannery and utilization of the fish trap sites mentioned was undertaken by the plaintiff

for the purpose of furnishing employment for the members of the Angoon Community Association to provide a means of allowing them to have their social and welfare needs advanced through use of profits obtained from the operation, all designed to promise the advancement of the people of the said Community in a manner compatible with the intention of the Congress of the United States to care and provide for the social and economic welfare of the Indian.

VI.

That on or about November 14, 1958, the Secretary of the Interior published in the Federal Register (23 F.R. 8874) a notice that he intended to amend the then existing regulations governing fishing for or taking species of commercial fish and shellfish in the waters of Alaska, and that it was proposed to prohibit the taking of fish in Alaska waters by use of fish traps except insofar as certain Indian tribes or villages were concerned; that on March 7, 1959, the said Secretary of Interior published his amendments to the fishing regulations in 24 F.R. 2053, and therein prohibited the taking of fish in Alaska waters by use of fish traps, except that such taking would be allowed with respect to trap sites owned, among others, by the Angoon Community Association, plaintiff herein, therein described as follows:

(1) Angoon-Basket Bay, located at 57°26′16″ N. lat. 134°51′34″ W. long.

(2) Angoon-Eagle Island, located at 57°22′28′ N. lat. 134°34′18″ W. long.

(3) Angoon-Point Caution, located at 57°13′152″ N. lat. [fol. 32] 134°39′05″ W. long.

VII.

That on or about March 10, 1959, Elmer Bennett, the then acting Secretary of the Interior advised James E. Hawkins, Area Director, Alaska Native Service, Juneau, Alaska, that pursuant to the disclaimer of Indian fishing rights made by the State of Alaska, upon admission to

the Union, and pursuant to the long-standing supervisory control exercised by the United States for the protection of the Indians, the regulations for fishing in Alaska for 1959 would permit the operation of traps by the plaintiff (among others) and that therefore the plaintiff (among others) could proceed to make plans for operation of their salmon canneries in 1959 on the basis that they would be allowed to continue the use of such traps as designated by the Secretary; that this information was transmitted by James E. Hawkins to the plaintiff herein under date of March 16; that pursuant to the information therein contained the plaintiff then undertook to ready itself to operate its cannery for the 1959 season based upon the operation of three trap sites; that pursuant thereto, plaintiff notified the Acting Regional Director of the Bureau of Commercial Fisheries, Juneau, Alaska, under date of April 1, 1959, the plaintiff was going to operate the three above described trap sites.

VIII.

That on or about May 21, 1959, the defendant, William A. Egan as Governor for the State of Alaska made public his intent to seek enforcement of a Statute of the State of Alaska, identified as 17 SLA 1959, stating that said statute prohibited the use of fish traps in Alaska, and that it made it a crime subject to fine and imprisonment to violate the provisions thereof and stating further that the third ordinance of the Constitution of Alaska prohibit the plaintiff's use of fish traps, and that the police power of the State of Alaska prohibited said use; thereafter the said defendant on numerous occasions, in newspapers and in personal appearances before the public, including appear-[fol. 33] ances before the Council of the plaintiff stated that if the plaintiff installed its traps that the State of Alaska would seize them, arrest the persons who installed and maintained them, and take such other actions as he deemed appropriate to the alleged violation of law; these threats were also made by agents of the defendant William A. Egan acting on his behalf directly to the plaintiff's council on a number of occasions and to the attorneys retained to

represent the plaintiff's interests; that on or about the 15th day of June, 1959, The Organized Village of Kake, Alaska d/b/a Keku Canning Company, set one of its trap frames at a site allotted to it by the Secretary of the Interior at Pybus Point, Alaska, and thereafter the defendant, William A. Egan, carried out his threat and caused the law enforcement officers of the State of Alaska to arrest the President of the Council of said Organized Village of Kake, Alaska, and the foreman of the crew that set the trap, and caused informations to be filed against them in this Court, and further that said trap has been seized and possessed by these law enforcement officials acting under direct authority of said defendant William A. Egan.

IX.

That the action heretofore taken by the said defendant and his agents, and the action threatened to be taken is wrongful and in violation of the laws of the United States of America, and in violation of the Constitution of the United States of America, and in violation of the Constitution of the State of Alaska, for the following reasons, and such other reasons as will be brought forth at trial of this cause, to-wit:

1. That the laws of the United States of America prevent the State of Alaska, or any officer or agent thereof from exercising any control over the super-
[fol. 34] vision and management of the fish and wildlife in Alaska at this time (Section 6e Statehood Act, 72 Stat. 339, Section 6e).

2. The laws of the United States of America (Section 4 Statehood Act, 72 Stat. 339, Sec. 4) and the Constitution of the State of Alaska (Article 12 Section 12) prevent the State of Alaska from interfering with the control and management of Indian fishing rights held either by the Indians or held by the United States of America in trust for Indians, at any time, now or in the future.

3. The regulations issued by the Secretary of Interior (24 F.R. 2053, et seq.) March 7, 1959, allowing

the plaintiff to operate and utilize three fish traps at the sites noted hereinabove constitute an exercise by the United States of its exclusive power both over the whole Alaska Fisheries and over the fishing rights of Indians.

4. The commerce clause of the Constitution of the United States of America places the regulation of the social and economic welfare of Indians, as well as the regulation of fish and wildlife resources of the United States exclusively within the power of Congress of the United States.

5. That the statute under which defendant claims his authority (17 SLA 1959), the claimed constitutional mandate (Ordinance #3), and the general claim of police power are all repugnant to the principles and laws above stated and therefore are in violation of the laws of the United States, the Constitution of Alaska and Constitution of the United States of America and are therefore void and of no force and effect.

[fol. 35]

X.

That unless the Court prevents the defendant from so doing by its power of injunction, the defendant will cause his agents and law enforcement officials to seize the plaintiff's traps, arrest the people employed by plaintiff to erect and maintain said traps, every time the plaintiff seeks to place and fish such trap or traps pursuant to the regulations issued by the Secretary of Interior as above mentioned; all to the irreparable harm and damage of plaintiff as below set forth.

XI.

That the wrongful seizure of plaintiff's traps and arrest of plaintiff's employees engaged in setting and maintaining said traps will result in irreparable harm and damage to the plaintiff as follows: That if the plaintiff is unable to use the three traps that it has made ready to locate at sites approved by the Secretary of the Interior, the traps will become valueless to the plaintiff with a loss to the plain-

tiff of about $67,500.00, which figure includes only the physical value, that 30% of the plaintiff's canned salmon production is based on trap caught salmon, and that without the use of these three traps plaintiff would be forced to drastically curtail its operation, quite likely to the point of complete shutdown; that plaintiff cannot convert to an operation completely supported by a seine fleet because (1) there are no boats available either in Alaska or in the other states (2) if boats were available there are no trained crews to man them (3) plaintiff has neither the funds nor source of funds to acquire such a fleet, if one was available; such curtailment or closure of the cannery would result in direct loss to the plaintiff of the value of the cannery and equipment which has no value other than that of a salmon cannery, in the amount of $207,000.00 and would result in plaintiff being unable to retire its current obligation of [fol. 36] $848,000.00 to the United States, and would result in a payroll loss to the 70 to 100 employees of the plaintiff (members of the plaintiff corporation) of about $50,000.00 to $65,000.00, and would result in the loss to the plaintiff of 30% of the net profits of the cannery that go to its members for community advancement and improvement; that none of these direct losses can be recovered from the State of Alaska under the terms of 170 SLA 1957; that the only employment available now, and historically, to the members of the plaintiff corporation at Angoon Alaska, is in the cannery or on plaintiff's seine boats and trap servicing vessels; that this employment though of short duration constitutes the sole source of income for the calendar year for almost all of plaintiff's members, that the closure of plaintiff's cannery, or curtailment to the point where it could operate would completely wipe out the economic base of the plaintiff's members, and leave the community of Angoon with no means of self support and entirely dependent upon relief dole and welfare aid; that the harm and damage that will accrue to the plaintiff and to its members thereby is beyond all calculation and extends to the very fiber of their social, economic and cultural well being, for which no measure of money damages can be fixed.

XII.

That the commercial salmon fishing season at plaintiff's trap sites commences 6:00 o'clock A.M., Wednesday, the 24th day of June, 1959; that it is necessary that the trap frames and related gear be placed at the sites and made ready for operation prior to the opening time in order that no fishing time will be lost; that the season closes on the 22nd day of August, 1959, at 6:00 o'clock P.M., and the time lost at the opening of the season cannot be added on to the end thereof; that if plaintiff places its traps [fol. 37] in position the defendant will cause his agents and officials to seize the traps and arrest the people involved unless restrained by order of this Court; and that for that reason it is necessary that defendant and his agents be restrained from interfering in any way with the advance placing and setting of said traps at said sites.

XIII.

That it is necessary that a temporary restraining order without notice issue upon the filing of this complaint, as prayed for herein, in order to preserve the status quo of plaintiff's rights pending the hearing on the prayer and motion for a preliminary injunction because unless restrained the defendant and his agents will make the seizures and arrests herein referred to and thereby accomplish the very wrongful act that plaintiff is seeking to restrain before a hearing can be had on this complaint for an injunction, and that as alleged herein in Paragraph XII it is necessary that plaintiff set its traps as soon as possible if it is to avoid the irreparable damage and loss that it seeks by this petition to avoid; and that the very irreparable harm and damage and loss alleged in Paragraph XI herein will take place in large part during the time that elapses from the filing of this complaint and a determination on the prayer for a preliminary injunction unless defendant is so restrained.

XIV.

That the plaintiff has no plain, speedy or adequate remedy at law to prevent the unlawful action of the defendant and his agents.

Wherefore, Plaintiff prays as follows: That the defendant, his agents, successors, deputies, servants and employees, and all persons acting by or through or under him be perpetually enjoined from interfering in any manner with the right of the plaintiff to erect, moor, maintain, [fol. 38] operate and fish floating fish traps of the type allowed by the Secretary of the Interior of the United States of America at the following sites:

(1) Angoon-Basket Bay, located at 57°36'16" N. lat. 134°51'34" W. long.

(2) Angoon-Eagle Island, located at 57°22'28" N. lat. 134°34'18" W. long.

(3) Angoon-Point Caution, located at 57°13'52" N. lat. 134°39'05" W. long.,

and that defendant, his agents, successors, deputies, servants and employees, and all persons acting by or through or under him be perpetually enjoined from in any manner attempting to enforce the provisions of 17 SLA 1959 or the provisions of any other law of the State of Alaska so as to prevent the plaintiff from operating said traps or so as to punish or penalize or prosecute plaintiff, its employees, agents or members for operating fish traps as above described and that pending the filing of an answer and the hearing and determination of this action that a preliminary injunction restraining the defendant, his agents, successors, deputies, servants, and employees and all persons acting by or through or under him from interfering in any manner with the right of the plaintiff to erect, moor, maintain, operate and fish floating fish traps of the type allowed by the Secretary of the Interior of the United States of America at the sites listed hereinabove and from in any manner attempting to enforce the provisions of 17 SLA 1959 or the provisions of any other law of the State of Alaska so as to prevent the plaintiff from operating said traps or so as to punish or penalize or prosecute plaintiff, its employees, agents or members for operating fish traps as above described, and further that pending the hearing thereof that a restraining order issue restraining the de-

fendant, his agents, successors, deputies, servants and em-
[fol. 39] ployees, and all persons acting by or through or under him be perpetually enjoined from interfering in any manner with the right of the plaintiff to erect, moor, maintain, operate and fish floating fish traps of the type allowed by the Secretary of the Interior of the United States of America at the above mentioned sites, and from in any manner attempting to enforce the provisions of 17 SLA 1959 or the provisions of any other law of the State of Alaska so as to prevent the plaintiff from operating said traps or so as to punish or penalize or prosecute plaintiff, its employees, agents or members for operating fish traps as above described. And that this Court declare 17 SLA 1959, the Third Ordinance of the Constitution of Alaska, and all other State laws relied upon by the defendant in support of his interference with plaintiff's right of fishery, void and of no force and effect insofar as their application extends to control, management, or restriction of plaintiff's right of fishery, and for such other and further relief as to the Court seem meet and equitable.

Dated at Ketchikan, Alaska, this 22d day of June, 1959.

R. L. Jernberg, C. L. Cloudy, Attorneys for Plaintiff.

Duly sworn to by Samuel G. Johnson, jurat omitted in printing.

[fol. 40]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action File No. 8064A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

v.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

AFFIDAVIT OF ALBERT THOMPSON, IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

State of Alaska)
) ss:
Ketchikan Precinct)

Albert Thompson, being first duly sworn, on oath deposes and says:

1. That he is the manager of the cannery for the Angoon Community Association, which is located at Hood Bay, Alaska, and does business under the name and style of Hood Bay Salmon Company. That he has been in charge of said cannery for the association since 1948. That in his capacity as manager he has charge and custody of all the records of said cannery and has personal knowledge thereof; and of matters transpired and existing between the Association and the United States.

2. That the United States on March 24, 1948, purchased from August Buschmann, H. A. Fleager and Arthur P. Wolf the cannery at Hood Bay, which included lands, buildings, machinery, equipment, floating equipment, supplies, fish traps, fish trap sites, rights, privileges and appurtenances, in trust for the Angoon Community Association. That the United States paid the sellers the sum of $260,000 for the above mentioned properties, and the Associa-
[fol. 41] tion entered into a purchase loan agreement with the United States whereby the latter would be reimbursed out of cannery earnings, together with interest at the rate

of 2% per annum. That the United States, also agreed to finance the Association's operation of said cannery, and has done so annually since 1948, and the total indebtedness of the Association to the United States is presently $848,-446.91. That the present value of said properties is $207,096.13.

That the Association has been preparing for the 1959 salmon season since the winter and spring of 1958-59, including the purchase of materials and labor to ready the Association's three (3) floating fish traps for the season which opens on June 24, 1959. That the money so expended on said fish traps has been advanced by the United States under said loan agreement, and amounts to approximately $30,000 which the Association is obligated to repay.

That the disbursement of all funds by the Association is subject to prior authorization being given by the United States, and the United States retains and exercises supervisory authority over all transactions respecting said cannery. That the employment of counsel in this case was made upon the approval of the Secretary of the Interior.

That the value of the trap frames, anchors, and gear, ready to fish, is approximately $22,500 each, or a total of $67,500 for the three traps involved. That the salvage value, if the native traps are abolished, would be almost nothing, due to the fact there is no other use for them besides fishing, and non-native traps have been banned, thereby eliminating the market for such gear. The wire mesh, cables, webbing, nails, bolts, staples and appurtenances would not be salvageable, and the remaining parts, namely, the logs and anchors, would be of little value.

[fol. 42] That, while the factors may vary with each annual salmon season, generally it is necessary to can about 32,000 cases before the cannery can expect a profit. That in order to reach even a goal of 32,000 cases intensive fishing by a large amount of fish catching gear is required. That during the 1958 season approximately 28% of the Association's pack was produced by its three floating fish traps, and 72% was produced by the members' 16 seine boats. That the elimination of the three traps would require, according to the experience of 1958, about 9 additional seine boats. That seine boats cost between $30,000 and $60,000 each, and according to Affiant's understanding

seine boats are unavailable either in Alaska or in the Puget Sound area, and if there were it is common knowledge that experienced fishermen are not. That while the United States has and does make the Association loans for cannery operations, it does not authorize the purchase, and has specifically prohibited the purchase of seine boats. That affiant believes the financial condition of the cannery is such that there are no sources of financing available to it for this purpose.

That the Angoon Community Association is the permittee of the U. S. Forest Service, which permits said Association to use certain of the Tongass National Forest lands for tailholds for said fish traps. That, also, the Association has been licensed by the U. S. Corps of Engineers to moor and install fish traps in the navigable waters.

That the Association is and has been immune from raw fish taxes and fish trap license taxes which were imposed on non-native fish trap operators by the Territory of Alaska, and the now State of Alaska, by virtue of the Association's status as an instrumentality of the United States. That the Territory of Alaska, and the now State of Alaska, has never regulated or attempted to regulate fish traps.

[fol. 43] That the Association in the operation of said fish traps has abided by all conservation directives of the U. S. Fish & Wildlife Service, and the Association in 1953 voluntarily reduced its trap production capacity by 50%.

That the population of Angoon is approximately 306, all of whom are members of the plaintiff corporation, and each year men, women and children migrate from their village to the cannery at Hood Bay, where individual quarters and family dwellings are provided them. That pre-season preparations of the traps and cannery creates employment of about 20 men; that during the season about 14 men and 64 women are employed in the cannery, and about 80 men are working on seine boats. That the wages earned by cannery employees approximate $75,000 annually, and the earnings from the cannery and fishing provides all of the income these natives enjoy.

That the elimination of the three traps would obviously critically reduce production of canned salmon, and as the

manager for the Association affiant could not recommend operation of the cannery with 16 seine boats, based on experience of the past several seasons. That the result of closure would be the loss of employment and income, community improvements and of more importance the interest and desire for betterment that the Angoon Indians have developed from their beneficial ownership of and participation in the affairs of the Hood Bay cannery.

That on April 6, 1959, the cannery, as it is required so to do, notified the U. S. Bureau of Commercial Fisheries that it would install for operation during the 1959 salmon fishing season the following named fish traps, Point Caution #1, Eagle Island #2, and Basket Bay #3, under the authority granted by the Secretary of the Interior, as set forth in the Federal Register for March 19, 1959, at page 2069.

[fol. 44] That the floating fish traps above mentioned are ready to be moved to said sites and to fish on June 24, 1959, however, the Association and affiant have received notice officially and through news media that the State of Alaska would prevent fishing by traps by filing criminal charges; and, that affiant has knowledge of the occurrences involving the Pybus Point trap, installed by the Organized Village of Kake, wherein the State of Alaska, on June 17, 1959, arrested the president of the village council and others for alleged violations of a state law prohibiting the installation of traps.

That during my tenure as cannery manager for the Angoon Community Association, which commenced in 1948, I have read and studied each annual issue of the commercial fishery regulations promulgated by the Secretary of the Interior, and the 1959 regulations contained the first reference, to my knowledge, to regulations relating to native fish traps.

Albert Thompson

Subscribed and sworn to before me this 22d day of June, 1959.

Robert L. Jernberg, Notary Public for Alaska, My commission expires: April 29, 1961.

(Seal)

[fol. 45]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action File No. 8064A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

v.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

AFFIDAVIT OF SAMUEL G. JOHNSON IN SUPPORT OF COMPLAINT FOR A TEMPORARY RESTRAINING ORDER

State of Alaska)
) ss:
Ketchikan Precinct)

Samuel G. Johnson, being first duly sworn, deposes and says:

1. That the plaintiff, the Angoon Community Association, is a Federal Chartered Indian Corporation under the Indian Reorganization Act of June 18, 1934, as amended, and that its charter was duly approved by the Secretary of the Interior and ratified by the members of the association.

2. That affiant is and has been since 1948, the president of the council, the governing body of said Angoon Community Association, and is duly authorized by said council to make this affidavit.

3. That the Angoon Community Association is located at Angoon, Alaska, which is situate on the west coast of Admiralty Island, approximately 75 miles southwesterly from Juneau, Alaska. That the community consists of 306 persons, all of whom are native Alaska Indians of the Tlinget tribe, and of whom 166 are adults and the re-
[fol. 46] mainder are children. That the entire adult population is wholly dependent upon the salmon fishery, as

primary fishermen and workers in and about the salmon cannery at Hood Bay, Alaska, a few miles southerly of Angoon. That each salmon season the entire population (excepting 22 aged and infirm natives), men, women and children, move from their homes at Angoon to the Hood Bay Cannery for the season's work, which is normally the three summer months.

4. The United States is the owner of the Hood Bay Cannery and the Angoon Community Association is the beneficial owner thereof, its buildings, machinery, equipment vessels, floating fish traps.

5. That the United States, as aforesaid, is the owner of all of said cannery and fish traps, by virtue of a conveyance to the United States, in trust for the Angoon Community Association, from August Buschmann, H. A. Fleager and Arthur P. Wolf, on March 24, 1948, and owner of the War Department and Forest Service permits for said traps. That, by virtue of a purchase loan agreement, the United States has required the Angoon Community Association to reimburse it for the cost of said cannery, equipment and fish traps, plus additional loans and advances made since 1948. That the earnings of the Hood Bay cannery are handled under the supervision of the United States, and are distributed as follows: Debt retirement, funding for operations, reserve for depreciation and improvements, for social, educational and relief purposes, and dividends to members, provided the Association is not indebted to the United States. That 25% of the net profits from the cannery operations before costs of administration are paid, are given to the Association for public works and other improvements in the Angoon village; and 5% of the net profits from said cannery operations, before costs of administration are paid, are allocated to the Association seine fishermen supplying fish to the cannery.

[fol. 47] That under the loan agreement above described, the Angoon Community Association is presently indebted to the United States for the sum of $848,446.91, which includes the sum of $30,000 advanced by the United States for the installation of the three fish traps for the 1959 fishing season.

6. That the Secretary of the Interior, the Honorable Fred A. Seaton, during the latter part of 1958, assured the Association it could install floating fish traps, and by virtue of this and other official releases and notices preparations were made for the 1959 season, including the borrowing of money from the United States for the purchase of materials for the traps. That on March 19, 1959, the Secretary of the Interior issued a regulation in the Federal Register, numbered 115.26, stating that:

"Salmon traps owned and operated by native Indian communities may be operated in 1959 at the following sites:

(c) Angoon Community Association.

(1) Angoon-Basket Bay, located at 57° 26′ 16″ N. Lat., 134° 51′ 34″ W. long.

(2) Angoon-Eagle Island, located at 57° 22′ 28″ N. Lat., 134° 34′ 18″ W. long.

(3) Angoon-Point Caution, located at 57° 13′ 52″ N. Lat., 134° 39′ 05″ long."

7. That the money invested in equipping the three traps, as mentioned in paragraph 5 above, if the community is deprived the use of the traps, cannot be recovered. That the traps are made up and readied for operation, and the materials therein would be rendered valueless if the traps had to be dismantled, as the components, such as wire mesh, webbing, labor, etc., would be unsalvageable. In addition thereto there will be not less than a 30% loss of production of fish which cannot otherwise be recovered. All available seine boats have been utilized in the past, and it is quite [fol. 48] unlikely there would be any substantial increase in their catches. There is a great lack of seine boats in Alaska, and none could be built or manned within the brief time remaining before the season opens. That the loss of use of traps means fewer cases of salmon will be produced, and the cannery, which is practically the sole means of support for the Angoon natives, will be forced to cut employment. That the loss of production normally enjoyed from the trap could conceivably result in a partial or com-

plete closure of the cannery. That there is no provision in law for the extension of the salmon fishing season whereby the Angoon Community Association, if the said fish traps are not allowed to fish with the result the production would be dependent upon the catches from the members' 16 seine boats, could possibly recapture the loss the banning of said traps would create.

8. That on or about June 5, 1959, the State of Alaska notified the Angoon Community Association that it could not install or operate the fish traps above mentioned, and that it would arrest and attempt to obtain the conviction of anyone who attempted to install said traps under an alleged State statute, and that said threatened action by the State of Alaska has interfered with the fishing rights of the Association and prevented the installation of said traps, all of which has done the Association irreparable injury and damage for which there is a lack of legal remedy, as affiant verily believes.

9. That the Indian Reorganization Act of June 18, 1934, as applied to Alaska and to the plaintiff, has looked toward the creation of a solid fishing economy benefiting the Indians and the members of the plaintiff corporation; that it has been applied through use of the cooperative fishing and processing venture in an effort to raise the standard of living above that of a mere subsistence level; that the [fol. 49] choice of creating a solid fishing economy, over that of some other type of economy was determined by the physical location of plaintiff's village, the resources available to it, and the capacities and capabilities of its members; that no other economic base has been established nor has any type of economic base appeared available and suitable to our needs or abilities; that the members of the plaintiff corporation are incapable, through no fault of their own, of finding and placing in operation a substitute base of economy; that it is the understanding of myself and the members of the plaintiff corporation that the decision of the Secretary of the Interior to allow the plaintiff to utilize the trap sites herein involved was based (in addition to legal principles) upon a continuing fulfillment of a plan to create a sound fishing economy for us; that the loss of these trap sites and the right to fish them and the re-

sultant closure of our cannery (or the curtailment of operation to a point where its benefits become insignificant) operation will wipe out all advances we have made toward establishing ourselves within a strong social and economic framework of living and will leave us with no avenue of escape from a lifetime of dependence upon public relief.

10. That the State of Alaska will suffer no damage from the granting of a temporary restraining order.

Samuel G. Johnson

Subscribed and sworn to before me this 22d day of June, 1959.

Robert L. Jernberg, Notary Public for Alaska, My commission expires: April 29, 1961.

(Seal)

[fol. 50]

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL AND ORDER THEREON

Omitted. Printed side folio 191, page 66, supra.

[fol. 52]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action No. 8063-A

ORGANIZED VILLAGE OF KAKE, Plaintiff,

v.

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

MOTION TO DISMISS—June 23, 1959

Comes now the defendant, Governor of Alaska, through his attorney, the Attorney General, and moves this Court to dismiss the cause herein on the ground that the complaint fails to state a claim upon which relief may be granted.

1. The Situs of all places here involved is within Inland waters of Alaska or on the tidelands of Alaska over which the State has, in this instance, exclusive jurisdiction.

2. Plaintiff has no property right in a fish trap location.

3. The State of Alaska has authority to prohibit fish traps for use in commercial fishing.

4. The Constitution of Alaska, prohibiting fish traps without exception, has amended the White Act, 48 U. S. C. A. 221 et seq.

5. Regulation 115.26, Revised Regulations of 1959, promulgated by the Secretary of the Interior, Fred A. Seaton, is invalid.

a. Creates a discrimination not permitted under the White Act.

b. Conflicts with the Constitution of Alaska.

[fol. 53] And for such other reasons as may appear from the memorandum to be filed herein and made a part of this motion.

Dated at Juneau, Alaska, this 23rd day of June, 1959.

John L. Rader, Attorney General of Alaska, By James M. Fitzgerald, Special Assistant Attorney General.

Copy received 6-27-59
R. L. Jernberg

[fol. 54]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action No. 8064-A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

v.

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

MOTION TO DISMISS—June 23, 1959

Comes now the defendant, Governor of Alaska, through his attorney, the Attorney General, and moves this Court to dismiss the cause herein on the ground that the complaint fails to state a claim upon which relief may be granted.

1. The situs of all places here involved is within Inland waters of Alaska or on tidelands of Alaska over which the State has, in this instance, exclusive jurisdiction.

2. Plaintiff has no property right in a fish trap location.

3. The State of Alaska has authority to prohibit fish traps for use in commercial fishing.

4. The Constitution of Alaska, prohibiting fish traps without exception, has amended the White Act, 48 U. S. C. A. 221 et seq.

5. Regulation 115.26, Revised Regulations of 1959, promulgated by the Secretary of the Interior, Fred A. Seaton, is invalid.

[fol. 55] a. Creates a discrimination not permitted under the White Act.

b. Conflicts with the Constitution of Alaska.

And for such other reasons as may appear from the memorandum to be filed herein and made a part of this motion.

Dated at Juneau, Alaska, this 23rd day of June, 1959.

John L. Rader, Attorney General of Alaska, By James M. Fitzgerald, Special Assistant Attorney General.

(Copy received 6-23-59)
R. L. Jernberg
[fol. 56]

AFFIDAVIT OF WALTER KIRKNESS

Omitted. Printed side folio 43, page 41, supra.

[fol. 58]

AFFIDAVIT OF HAAKON B. FRIELE

Omitted. Printed side folio 45, page 43, supra.

[fol. 64]

AFFIDAVIT OF CLARENCE D. PAYNE

Omitted. Printed side folio 51, page 48, supra.

[fol. 123]

AFFIDAVIT OF ALF ERICKSON

Omitted. Printed side folio 173, page 51, supra.

[fol. 124]

AFFIDAVIT OF NEIL GRANT

Omitted. Printed side folio 174, page 51, supra.

[fol. 125]

AFFIDAVIT OF HAROLD MARTINDALE

Omitted. Printed side folio 175, page 52, supra.

[fol. 126]

AFFIDAVIT OF WILLIAM E. SMITH

Omitted. Printed side folio 176, page 52, supra.

[fol. 127]

AFFIDAVIT OF PETERSBURG FISHING VESSEL OWNERS' COOPERATIVE

Omitted. Printed side folio 177, page 53, supra.

[fol. 129]

REPORTER'S TRANSCRIPT OF EXTRACT OF PROCEEDINGS—June 29, 1959

Omitted. Printed side folio 179, page 54, supra.

[fol. 132]

EXTRACT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS ON JULY 1, 1959, CONTAINING APPELLANTS' ORAL NOTICE OF APPEAL

Omitted. Printed side folio 182, page 57 supra.

[fol. 133]

OPINION—Filed July 1, 1959

Omitted. Printed side folio 183, page 58, supra.

[fol. 141]

SUPPLEMENTAL FINDINGS OF FACT NOS. 1, 2 AND 3

Omitted. Printed side page 67, supra.

[fol. 143]

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL AND ORDER THEREON

Omitted. Printed side folio 191, page 66, supra.

[fol. 145]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

No. 8063-A

In the matter of the ORGANIZED VILLAGE OF KAKE,
Plaintiff,

v.

WILLIAM A. EGAN, Defendant.

ORDER FOR DISMISSAL

This Matter having come on before the Court for final hearing on plaintiff's complaint for a permanent injunction on the 29th day of June, 1959; plaintiff appearing through its counsel, R. L. Jernberg and C. L. Cloudy, and defendant appearing through his counsel, the Attorney General for the State of Alaska, and the Court having heard oral argument and having rendered its opinion, which opinion with supplemental findings of fact is in lieu of findings of fact and conclusions of law,

It Is Therefore Ordered, Adjudged and Decreed that the complaint of the plaintiff be and it hereby is dismissed with prejudice.

Witness my hand and seal of this honorable Court this 2nd day of July, 1959.

Raymond J. Kelly, District Judge.

[fol. 146]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

No. 8064-A

In the Matter of the ANGOON COMMUNITY ASSOCIATION, Plaintiff,

v.

WILLIAM A. EGAN, Defendant.

ORDER FOR DISMISSAL

This Matter having come on before the Court for final hearing on plaintiff's complaint for a permanent injunction on the 29th day of June, 1959; plaintiff appearing through its counsel, R. L. Jernberg and C. L. Cloudy, and defendant appearing through its counsel, the Attorney General for the State of Alaska, and the Court having heard oral argument and having rendered its opinion, which opinion with supplemental findings of fact is in lieu of findings of fact and conclusions of law,

It Is Therefore Ordered, Adjudged and Decreed that the complaint of the plaintiff be and it hereby is dismissed with prejudice.

Witness my hand and seal of this honorable Court this 2nd day of July, 1959.

Raymond J. Kelly, District Judge.

[fol. 149]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

No. 8063-A

THE ORGANIZED VILLAGE OF KAKE, ALASKA

v.

WILLIAM A. EGAN, as Governor of the State of Alaska

No. 8064-A

ANGOON COMMUNITY ASSOCIATION

v.

WILLIAM A. EGAN, as Governor of the State of Alaska

JOURNAL ENTRY OF MONDAY—June 29, 1959
3:15 o'clock P.M.

At this time the hearing of this case was resumed with Mr. Fitzgerald continuing with his arguments in behalf of State of Alaska. At 4:00 p.m. there was another recess for 10 minutes, after which Mr. Fitzgerald continued his arguments. at 5:06, Mr. Cloudy, in Rebuttal raised a few Points referred to by Defendant.

Mr. R. H. Ziegler, Sr. informed the court that the matter of the Metlakatla Hearing would be ready at 1:30 P.M. tomorrow, to which the Court concurred. The same maps and exhibits are to be used, there being no objections from the present counsel in these two cases, as there will probably be an overlapping of conditions and situations.

The decision in these two cases will hold until after the hearing of the Metlakatla case.

Thereupon court adjourned till 9:30 tomorrow.

[fol. 150] AFFIDAVIT OF LT. E. L. MAYFIELD

Omitted. Printed side folio 212, page 70, supra.

[fol. 152]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action No. 8063-A

ORGANIZED VILLAGE OF KAKE, Plaintiff,

v.

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

Civil Action No. 8064-A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

v.

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

MOTION TO CONSOLIDATE—June 23, 1959

Defendant moves this court for an order consolidating the above-titled cases for purposes of briefing, argument and hearing, for the reason that they involve similar questions of law and fact. That this consolidation will considerably expedite the hearings, will suit the convenience of the parties, and cause injury to no one.

Dated at Juneau, Alaska this 23 day of June, 1959.

[fol. 153] John L. Rader, Attorney General of Alaska, James M. Fitzgerald, Special Assistant Attorney General.

(Copy received 6-23-59)
R. L. Jernberg

ORDER—June 23, 1959

On motion of defendant, it is hereby ordered that the above-entitled cases be and are hereby consolidated for purposes of briefing, argument and hearing.

Dated at Juneau, Alaska, this 23rd day of June, 1959.

Raymond J. Kelly, District Judge.

[fol. 154] AFFIDAVIT OF WALTER KIRKNESS

Omitted. Printed side folio 43, page 41, supra.

[fol. 163]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

No. 8063-A

THE ORGANIZED VILLAGE OF KAKE, ALASKA, Plaintiff,

v.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

No. 8064-A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

v.

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS—June 23, 1959

Be It Remembered, that on the 23rd day of June, 1959, court having convened at 9:30 o'clock a.m., at Juneau, Alaska, the above-entitled cause came on for hearing; the

Honorable Raymond J. Kelly, United States District Judge, presiding; the plaintiffs appearing by R. L. Jernberg and C. L. Cloudy, their attorneys; the defendant appearing by John Rader, Attorney General of Alaska, Douglas Gregg, Assistant Attorney General, and James Fitzgerald, Special Assistant Attorney General; and at the conclusion of the hearing the Court ruled as follows:

[fol. 164] The Court: Well, this of course is a very important matter to both sides, and in a matter of such broad public interest as this which we have here, especially where we have an arm of the Federal Government opposed to the sovereign State of Alaska over the interests of a small minority of the citizens of such State, this Court must exercise great caution in interfering with the situation as it exists today at this very moment.

Now, plaintiffs state they cannot properly proceed today, and I can understand their reasons, which appear reasonable. A question of this importance must be carefully prepared and fully presented so that a complete record may be made.

As this Court was reluctant to issue any sort of a temporary restraining order herein without notice so is the Court reluctant to issue any such order which would in effect permit the installation and operation of the traps until their legal status is determined. Since the Court is willing to hear this today, and since the defendant is ready to proceed in opposing the issuance of a temporary injunction at this time, but the plaintiff cannot present their case in this regard until next Monday, this Court feels that no temporary restraining order should issue and that the hearing on the application for temporary injunction should be set for 9:30 a.m., Monday, June 29th.

I realize this action may result in the loss of a few days operation of the traps if the Court finds the injunction should issue. On the other hand, the loss to plaintiffs would be considerable also should the Court find that no injunction should issue. The plaintiff's rights are not so clear in the face of matters within the knowledge of the Court of which he is bound to take notice as to come within a situation where a clear, unclouded, unquestionable, and complete property right is about to be interfered with. The only way

this matter can be properly determined is by a complete and full hearing, and this we will have on June 29th at 9:30 a.m.

(End of Extract of Proceedings)

[fol. 165] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 229]

EXHIBIT

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25 D.C.

Air Mail

Mar 10 1959

Dear Mr. Hawkins:

The Department's press release of November 14, 1958 announced the notice of public hearing on the proposal to adopt amendments to existing regulations for the protection of commercial fisheries in Alaska, published in the Federal Register of November 14, 1958. As stated in the release, publication followed the decision on November 8 to propose elimination of all fish traps except those owned by Indian tribes or villages.

The proposal to eliminate fish traps in the pending regulations was motivated by the desire of the Department to adjust its actions as quickly as possible to the desires of the Alaskans in regard to the control of their natural resources. The people of Alaska twice voted in referendum to abolish traps.

As you know, under section 4 of the act of July 7, 1958 (72 Stat. 339) the State of Alaska disclaimed jurisdiction over any lands or other property, including fishing rights, held by any Indians, Eskimos, or Aleuts, or which is held

by the United States in trust for them, and recognized continuing federal authority thereover. This disclaimer, coupled with the longstanding supervisory control exercised for the protection of the interests of Indians, Eskimos and Aleuts by the Department of the Interior, accounts for the provision that the proposed regulations will not eliminate operation of fish traps by Indian tribes or villages. The Secretary will continue to control the operation of traps by Indian tribes and villages.

The Angoon Community Association, the Organized Village of Kake, and the Metlakatla Indian Community may proceed to make plans for operation of their salmon canneries in 1959 on the basis that they will be permitted to continue to operate the number of fish traps consistent with proper conservation practices recommended by this Department.

Sincerely yours,

/s/ Elmer F. Bennett
Secretary of the Interior

Mr. James E. Hawkins
Area Director, Juneau, Alaska

Copy to Credit and to Solicitor

[fol. 230]

EXHIBIT

PERMIT No.
WD-386 Sheet No. 9

CORPS OF ENGINEERS, U. S. ARMY
OFFICE OF THE DISTRICT ENGINEER
ALASKA DISTRICT

Anchorage, Alaska

Refer to File No. 825-91-6
(P.E. Harris Company, Inc.) 251

24 April 1950

U. S. Department of the Interior
Bureau of Indian Affairs
Alaska Native Service
Juneau, Alaska

Gentlemen:

In accordance with paragraph (b) (5) of the regulations governing the placing and maintenance of fishing structures in the coastal waters of Alaska and navigable waters tributary thereto, as approved by the Secretary of War 24 February 1947, and in accordance with your written request dated 21 April 1950, the authorization granted by the Secretary of War in permit No. WD 386 to P. E. Harris and Company, in letter from the District Engineer, Seattle, Washington, dated 24 April 1947, to construct and maintain a fish trap on Point Pybus, east shore of Admiralty Island, and in Frederick Sound, Alaska. (Latitude 57218'40"N. Longitude 133°57'21"W) is hereby transferred to the UNITED STATES OF AMERICA in trust for the ORGANIZED VILLAGE OF KAKE, ALASKA.

The conditions to which the authorization is made subject remain in full force and effect.

Very truly yours,

/s/ L. E. Seeman
L. E. SEEMAN
Colonel, CE
District Engineer

[fol. 231]

EXHIBIT

PERMIT No. WD-390 — Sheet No. 9

CORPS OF ENGINEERS, U. S. ARMY
OFFICE OF THE DISTRICT ENGINEER
ALASKA DISTRICT

ANCHORAGE, ALASKA

Reply to File No.
825-91-6 (P. E. Harris
Company, Inc.) 254 — 24 April 1950

U. S. Department of the Interior
Bureau of Indian Affairs
Alaska Native Service
Juneau, Alaska

Gentlemen:

In accordance with paragraph (b) (5) of the regulations governing the placing and maintenance of fishing structures in the coastal waters of Alaska and navigable waters tributary thereto, as approved by the Secretary of War 24 February 1947, and in accordance with your written request dated 21 April 1950, the authorization granted by the Secretary of War in permit No. WD-390 to P. E. Harris and Company, in letter from the District Engineer, Seattle, Washington, dated 24 April 1947, to construct and maintain a fish trap on Cornwallis Point, north shore Kuiu Island, and in Saginaw Bay, Alaska (Latitude 56°55'52" N., Longitude 134°16'08" W.) is hereby transferred to the UNITED STATES OF AMERICA in trust for the ORGANIZED VILLAGE OF KAKE, Alaska.

The conditions to which the authorization is made subject remain in full force and effect.

Very truly yours,

/s/ L. E. Seeman
L. E. SEEMAN
Colonel, CE
District Engineer

[fol. 232]

EXHIBIT

PERMIT No. WD-395 Sheet No. 9

CORPS OF ENGINEERS, U. S. ARMY
OFFICE OF THE DISTRICT ENGINEER
ALASKA DISTRICT

ANCHORAGE, ALASKA

Refer to file No.
825-91-6 (P. E. Harris
Company, Inc.) 259 24 April 1950

U. S. Department of the Interior
Bureau of Indian Affairs
Alaska Native Service
Juneau, Alaska

Gentlemen:

In accordance with paragraph (b) (5) of the regulations governing the placing and maintenance of fishing structures in the coastal waters of Alaska and navigable waters tributary thereto, as approved by the Secretary of War 24 February 1947, and in accordance with your written request dated 21 April 1950, the authorization granted by the Secretary of War in permit No. WD-395 to P. E. Harris and Company, in letter from the District Engineer, Seattle, Washington, dated 24 April 1947, to construct and maintain a fish trap on Point Macartney, Kupreanof Island, and in Keku Strait, Alaska. (Latitude 57°01'23" N. Longitude 134°02'50" W) is hereby transferred to the UNITED STATES OF AMERICA in trust for the ORGANIZED VILLAGE OF KAKE, Alaska.

The conditions to which the authorization is made subject remain in full force and effect.

Very truly yours,

/s/ L. E. Seeman
L. E. SEEMAN
Colonel, GE
District Engineer

[fol. 233]

EXHIBIT

PERMIT No. WD-389 — Sheet No. 8

CORPS OF ENGINEERS, U. S. ARMY
OFFICE OF THE DISTRICT ENGINEER
ALASKA DISTRICT

ANCHORAGE, ALASKA

Refer to File No.
825-91-6 (P. E. Harris
Company, Inc.) 253 — 24 April 1950

U. S. Department of the Interior
Bureau of Indian Affairs
Alaska Native Service
Juneau, Alaska

Gentlemen:

In accordance with paragraph (b) (5) of the regulations governing the placing and maintenance of fishing structures in the coastal waters of Alaska and navigable waters tributary thereto, as approved by the Secretary of War 24 February 1947, and in accordance with your written request dated 21 April 1950, the authorization granted by the Secretary of War in permit No. WD-389 to P. E. Harris and Company, in letter from the District Engineer, Seattle, Washington, dated 24 April 1947, to construct and maintain a fish trap on the Alaska Mainland, approximately 1 nautical mile southeast of Cape Fanshaw Light and in Frederick Sound, Alaska. (Latitude 57°10'52" W., Longitude 133°32'44" W) is hereby transferred to the UNITED STATES OF AMERICA in trust for the ORGANIZED VILLAGE OF KAKE, Alaska.

The conditions to which the authorization is made subject remain in full force and effect.

Very truly yours,

/s/ L. E. Seeman
L. E. SEEMAN
Colonel, GE
District Engineer

[fol. 234]

EXHIBIT

DEED

KNOW ALL MEN BY THESE PRESENTS:

That AUGUST BUSCHMANN, H. A. FLEAGER and ARTHUR P. WOLF, co-partners doing business under the firm name and style "HOOD BAY SALMON COMPANY", as grantors, do by these presents for a valuable consideration grant, bargain, sell and convey unto the UNITED STATES OF AMERICA, Grantee, in trust for the Angoon Community Association, that certain trade and manufacturing site situated on the north shore of Hood Bay near the entrance of North Arm on Admiralty Island, being Non-Mineral United States Survey No. 1480, more particularly bounded and described as follows:

Beginning at corner No. 1, meander corner, impracticable to establish; from which U. S. Location Monument No. 1480, bears north sixty-three degrees one minute west three and twenty-nine hundredths chains distant; thence, north forty-five minutes west one and three tenths chains to witness corner to said corner No. 1, meander corner, an iron pipe four inches in diameter, thirty-six inches long, marked MC S-1480 WC COR 1 with a nail in top at correct point; five and twenty-seven hundredths chains to corner No. 2, an iron pipe four inches in diameter, thirty-six inches long, marked S1480 COR 2 with nail in top at correct point, thence, south eighty-nine degrees thirty minutes west eleven and thirty-nine hundredths chains to corner No. 3, an iron pipe three inches in diameter, thirty-six inches long, marked S1480 COR 9 with nail in top at correct point; (stamped) thence, south fifty-four degrees twenty-eight minutes west eleven and sixty-nine hundredths chains to corner No. 4, an iron pipe three inches in diameter, thirty-six inches long, marked S1480 COR 4 with nail in top at correct point; thence, south

(stamped) forty-five degrees thirty minutes east four and thirty-four hundredths chains to witness corner to corner No. 5 MC, an iron pipe three inches in diameter, thirty-six inches long, marked S1480 COR 5 MC with nail in top at correct point; five and forty-one hundredths chains to corner No. 5 MC, impracticable to establish; thence, meandering the north shore of Hood Bay at mean high tide, north fifty-five degrees fifty-two minutes east nine tenths of a chain, north fifty-seven degrees twenty-seven minutes east two and twenty-four hundredths chains, north sixty-two degrees forty-four minutes east one and seventy-three hundredths chains, north fifty-five degrees fifty-four minutes east one and forty-eight hundredths chains, north forty-five degrees eighteen minutes east one and twenty-six hundredths chains, north thirty-eight degrees six minutes east two and seventy-four hundredths chains, north sixty-four degrees twenty-two minutes east one and six tenths chains, north eighty-eight degrees forty-eight minutes east two and six hundredths chains, south seventy-one degrees fifty-five minutes east one and eighty-four hundredths chains, south seventy-four degrees forty-three minutes east four and two hundreds chains to corner No. 1 MC, the place of beginning, containing ten acres and twenty-four hundredths of an acre, according to the official plat of the Survey of the said Land, on file in the General Land Office.

SUBJECT TO: exceptions and reservations contained in United States Patent No. 1027418, Anchorage Serial No. 05521 .

together with all improvements thereon and the appurtenances thereunto belonging.

[fol. 235] TO HAVE AND TO HOLD the same unto the said United States of America and its assigns in trust for the Angoon Community Association forever. Grantors do jointly and severally, for themselves, their heirs, executors

and administrators covenant to and with the said United States and its assigns, forever, that they are lawfully and jointly seized in fee simple of the above described and granted property and premises and have a good and valid right to sell and convey the same; that said property and premises are at the time of the execution hereof, free from all encumbrances whatsoever except as provided in that certain lease to the Whiz Fish Products Company dated January 29, 1947, and except as herein stated; that they, their heirs, executors and administrators will warrant and defend the same to the said grantee and its assigns forever against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, grantors have set their hands and seals this 24th day of March, 1948.

/s/ August Buschmann (seal)

/s/ H. A. Fleager (seal)

/s/ A. P. Wolf (seal)

Co-partners doing business under the name and style "HOOD BAY SALMON COMPANY"

(Notary Seal Stamp)

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me AUGUST BUSCHMANN, H. A. FLEAGER and ARTHUR P. WOLF, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 24th day of March, 1948.

/s/ David O. Hamlin
Notary Public in and for the State of Washington, residing at Seattle.

TERRITORY OF ALASKA)
JUNEAU, ALASKA) ss

The within instrument was filed for record 10:30 A.M. o'clock, April 8, 1948, and duly recorded in book 40 of Deeds on pages 378, 379 of the record of said District.

Felix Gray (ls)
District Recorder

Filing fee $3.50
Paid Collect 3.40 Recorded by ls, 11-8

[fol. 236]

EXHIBIT

DEED.

The Grantor, P. E. HARRIS & Co., a Washington corporation, for and in consideration of the sum of ONE DOLLAR ($1.00), lawful money of the United States in hand paid, and other valuable considerations, conveys and warrants to the UNITED STATES OF AMERICA in trust for the ORGANIZED VILLAGE OF KAKE, Alaska, the following described real estate located in Southeastern Alaska, to-wit:

Beginning at corner No. 1, on beach and not established, from which U. S. Location Monument F. M. R. bears north fifty-four degrees, eighteen minutes, fifty seconds west eighty-five and sixty-eight hundredths chains distant; thence north sixty-seven degrees, forty-three minutes east one and forty-six-hundredths chains to witness corner to said corner No. 1, a granite boulder, 24 x 14 x 10 inches, marked with cross (x) on top at corner point and S 963, Cor. 1 W.C., M.C., M.C.; seven and seventeen-hundredths chains to corner No. 2, a granite boulder, 22 x 12 x 5 inches, marked with cross (x) on top at corner point and S 963 Cor. 2; thence south twenty-two degrees, seventeen minutes east nineteen and three-hundredths chains to corner No. 3, a granite stone, 20 x 12 x 5 inches, marked with cross (x)

on top at corner point and S 963 Cor. 3; thence south sixty-seven degrees, forty-three minutes west six and fifty-six-hundredths chains to witness corner to corner No. 4, a granite boulder 20 x 12 x 10 inches, marked with cross (x) on top at corner point and S 963 Cor. 4 W.C., M.C.; eight and seventy-two-hundredths chains to corner No. 4, on beach and not established; thence meandering arm of Frederick Sound, north thirteen degrees, twenty-five minutes west five chains, north twenty-six degrees, fifty-one minutes west two and nine-tenths chains, north six degrees, forty-seven minutes east one chain, north forty-seven degrees, two minutes west one and six-tenths chains, north thirty degrees, forty-four minutes west four and four-tenths chains, north nine degrees, two minutes west three and nine-tenths chains, north twenty-nine degrees, fifty-eight minutes east one and two-tenths chains to corner No. 1, the place of beginning, containing fifteen and ninety-hundredths acres, according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor-General.

This instrument is made pursuant to an agreement for the sale of properties by the Grantor to the Grantee dated December 15, 1959; this instrument being executed for recording in the Petersburg Recording District.

In Witness Whereof, said Grantor has caused these presents to be executed by its proper officers and its corporate seal to be hereunto affixed this 15th day of February, 1950.

P. E. Harris & Co.

By E. M. Brennan
Vice-President

[fol. 237] Attest:

(Darline Fravel)
Assistant Secretary (Seal)

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 15th day of February, 1950, before me personally appeared E. M. BRENNAN and DARLINE FRAVEL, to me known to be the Vice-President and Assistant Secretary, respectively, of P. E. HARRIS & Co., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

/s/ John D. Henry
Notary Public in and for the State of Washington, residing at Seattle.